

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LAMARIO SEARS,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, *et al.*,

Defendants.

Case No. 2:19-cv-01196-JAD-VCF

**REPORT AND RECOMMENDATION FOR
DISMISSAL WITH PREJUDICE**

On July 30, 2019, the Court granted plaintiff Lamario Sears's application to proceed *in forma pauperis* and dismissed his complaint without prejudice. (ECF No. 6). Plaintiff Sears's complaint arose from his arrest by the Las Vegas Metropolitan Police Department and his subsequent detention. (ECF No. 5 at 3, 5). Plaintiff brought three claims against the LVMPD, Clark County Detention Center, Naph Care, two employees of Naph Care referred to as Melody M. and Dr. Wade, and Judge William Kephart of the Eighth Judicial District for Clark Country, Nevada. (*Id.* at 2, 4-6).

Sears alleged that the LVMPD violated his Fourth, Eighth, and Fourteenth Amendment rights (Count I); that Judge William Kephart violated his rights pursuant to the Americans with Disabilities Act (42 U.S.C. § 12131), the Rehabilitation Act (29 U.S.C. § 794), and his Fourth, Eighth, and Fourteenth Amendment rights (Count II); and that staff at C.C.D.C. and Naph Care violated his Eighth and Fourteenth Amendment rights, as well as the ADA and RA (Count III). (ECF No. 4 at 1). The Court found the complaint failed to state a claim upon which relief can be granted. (ECF No. 6 at 7).

Counts I and III failed to state a claim because plaintiff cannot hold the LVMPD and Naph Care liable solely on a *respondeat superior* theory. See *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978)). (See ECF No. 6 at 4-7). The Clark County Detention Center is a building,

1 not an entity capable of being sued. (*Id.* at 6-7). Plaintiff did not allege that employees Melody M. and
2 Dr. Wade denied him medical services because of his physical handicap. (*Id.*). Count II failed to state a
3 claim because, “[a] state court judge is absolutely immune from damages actions under 42 U.S.C. §
4 1983 for acts committed within the course of his official duties.” *McManama v. Jones*, 258 F. App’x
5 941, 941 (9th Cir. 2007). (*Id.* at 5).

6 The Court gave plaintiff until August 30, 2019 to file an amended complaint and warned that
7 “[f]ailure to timely file aa Second Amended Complaint that addresses the deficiencies noted in this
8 Order may result in a recommendation for dismissal with prejudice of the complaint.” (*Id.* at 7).
9 Plaintiff has failed to file an amended complaint or an objection to the Court’s order. For the reasons
10 discussed in the Court’s July 30, 2019 Order (ECF No. 6), plaintiff’s complaint should be dismissed
11 with prejudice.

12 Accordingly, and for good cause shown,

13 IT IS RECOMMENDED that this action be DISMISSED WITH PREJUDICE and Judgment
14 entered, accordingly.
15

16 NOTICE

17 Under Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing
18 and filed with the Clerk of the Court within 14 days. The Supreme Court has held that the courts of
19 appeal may determine that an appeal has been waived due to the failure to file objections within the
20 specified time. (*See Thomas v. Arn*, 474 U.S. 140, 142 (1985)). This circuit has also held that (1)
21 failure to file objections within the specified time and (2) failure to properly address and brief the
22 objectionable issues waives the right to appeal the District Court’s order and/or appeal factual issues
23 from the order of the District Court. (*See Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v.*
24 *Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983)).
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1 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of
2 any change of address. The notification must include proof of service upon each opposing party or the
3 party's attorney. Failure to comply with this rule may result in dismissal of the action.

4 IT IS SO RECOMMENDED.

5 DATED this 16th day of September 2019.

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7 CAM FERENBACH
8 UNITED STATES MAGISTRATE JUDGE
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